

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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STEVEN G. WICKS,  
GERALD A. KALBFLEISCH, and  
MICHAEL and MYRTLE HATHAWAY

Plaintiffs,

v.

PUTNAM INVESTMENT  
MANAGEMENT, LLC and  
PUTNAM RETAIL MANAGEMENT,  
LLP

Defendants.

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Civil Action No. 04-10988-GAO

**ANSWER AND AFFIRMATIVE DEFENSES OF PUTNAM INVESTMENT  
MANAGEMENT, LLC AND PUTNAM RETAIL MANAGEMENT, LLP**

Defendants Putnam Investment Management, LLC and Putnam Retail

Management, LLP, by their undersigned counsel, answer the Amended Complaint in this action (the "Complaint") upon knowledge as to themselves and otherwise upon information and belief as follows.

1. Deny the allegations of paragraph 1 of the Complaint, except admit the allegations of the first sentence of that paragraph.
2. Deny the allegations of paragraph 2 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of that paragraph.
3. Deny the allegations of paragraph 3 of the Complaint, except admit the allegations of the first, second, and third sentences of that paragraph.
4. Deny the allegations of paragraph 4 of the Complaint.

5. Deny the allegations of paragraph 5 of the Complaint.
6. Deny the allegations of paragraph 6 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of that paragraph.
7. Deny the allegations of paragraph 7 of the Complaint.
8. Deny the allegations of paragraph 8 of the Complaint.
9. Deny the allegations of paragraph 9 of the Complaint.
10. Deny the allegations of paragraph 10 of the Complaint.
11. Deny the allegations of paragraph 11 of the Complaint.
12. Deny the allegations of paragraph 12 of the Complaint.
13. Deny the allegations of paragraph 13 of the Complaint.
14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14 of the Complaint.
15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of the Complaint.
16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.
17. Deny the allegations of paragraph 17 of the Complaint, except admit the allegations of the second sentence of that paragraph.
18. Admit the allegations of paragraph 18 of the Complaint.
19. Deny the allegations of paragraph 19 of the Complaint, except admit that Plaintiffs purport to bring this action under section 36(b) of the ICA.
20. Admit the allegations of paragraph 20 of the Complaint.

21. Admit the allegations of paragraph 21 of the Complaint.
22. Deny the allegations of paragraph 22 of the Complaint, except admit the allegations of the first sentence of that paragraph.
23. Deny the allegations of paragraph 23 of the Complaint and respectfully refer the Court to section 36(b) of the ICA for the complete contents thereof.
24. Deny the allegations of paragraph 24 of the Complaint, except admit the allegations of the first sentence of that paragraph
25. Deny the allegations of paragraph 25 of the Complaint.
26. Deny the allegations of paragraph 26 of the Complaint, except admit the allegations of the second sentence of that paragraph.
27. Deny the allegations of paragraph 27 of the Complaint.
28. Deny the allegations of paragraph 28 of the Complaint, except admit the allegations of the first sentence of that paragraph.
29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint.
30. Deny the allegations of paragraph 30 of the Complaint.
31. Deny the allegations of paragraph 31 of the Complaint, except deny knowledge of information sufficient to form a belief as to the truth of the allegations of the second, third, and fourth sentences of that paragraph.
32. Deny the allegations in paragraph 32 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph.
33. Deny the allegations of paragraph 33 of the Complaint.

34. Deny the allegations of paragraph 34 of the Complaint.

35. Deny the allegations of paragraph 35 of the Complaint.

36. Deny the allegations of paragraph 36 of the Complaint, except admit the allegations of the first sentence of that paragraph.

37. Deny the allegations of paragraph 37 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the Complaint.

39. Deny the allegations of paragraph 39 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of that paragraph.

40. Deny the allegations of paragraph 40 of the Complaint.

41. Deny the allegations of paragraph 41 of the Complaint, except admit the allegations of the first, second, third and fifth sentences of that paragraph.

42. Deny the allegations of paragraph 42 of the Complaint.

43. Deny the allegations of paragraph 43 of the Complaint.

44. Deny the allegations of paragraph 44 of the Complaint.

45. Deny the allegations of paragraph 45 of the Complaint.

46. Deny the allegations of paragraph 46 of the Complaint

47. Deny the allegations of paragraph 47 of the Complaint.

48. Deny the allegations of paragraph 48 of the Complaint.

49. Deny the allegations of paragraph 49 of the Complaint.

50. Deny the allegations of paragraph 50 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegation of the fourth sentence of that paragraph.

51. Deny the allegations of paragraph 51 of the Complaint.

52. Deny the allegations of paragraph 52 of the Complaint.

53. Deny the allegations of paragraph 53 and respectfully refer the Court to Gartenberg v. Merrill Lynch Asset Management, Inc., 694 F.2d 923 (2d Cir. 1982) for the complete contents of that decision.

54. Deny the allegations of paragraph 54 of the Complaint.

55. Deny the allegations of paragraph 55 of the Complaint.

56. Deny the allegations of paragraph 56 of the Complaint and refer the Court to Gartenberg v. Merrill Lynch Asset Management, Inc., 694 F.2d 923 (2d Cir. 1982) for the complete contents thereof.

57. Deny the allegations of paragraph 57 of the Complaint.

58. Deny the allegations of paragraph 58 of the Complaint

59. Deny the allegations of paragraph 59 of the Complaint.

60. Deny the allegations of paragraph 60 of the Complaint.

61. Deny the allegations of paragraph 61 of the Complaint.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62 of the Complaint.

63. Deny the allegations of paragraph 63 of the Complaint.

64. Deny the allegations of paragraph 64 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of that paragraph.

65. Denies the allegations of paragraph 65 of the Complaint.

66. Deny the allegations of paragraph 66 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the second, third, and fourth sentences of that paragraph.

67. Deny the allegations of paragraph 67 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of that paragraph.

68. Deny the allegations of paragraph 68 of the Complaint.

69. Deny the allegations of paragraph 69 of the Complaint.

70. Deny the allegations of paragraph 70 of the Complaint.

71. Deny the allegations of paragraph 71 of the Complaint.

72. Deny the allegations of paragraph 72 of the Complaint.

73. Deny the allegations of paragraph 73 of the Complaint.

74. Deny the allegations of paragraph 74 of the Complaint.

75. Deny the allegations of paragraph 75 of the Complaint.

76. Deny the allegations of paragraph 76 of the Complaint.

77. Deny the allegations of paragraph 77 of the Complaint.

78. Deny the allegations of paragraph 78 of the Complaint.

79. Deny the allegations of paragraph 79 of the Complaint.

80. Deny the allegations of paragraph 80 of the Complaint and respectfully refer the Court to the Freeman & Brown study for the complete contents thereof.

81. Deny the allegations of paragraph 81 of the Complaint.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of the Complaint.

83. Deny the allegations of paragraph 83 of the Complaint.

84. Deny the allegations of paragraph 84 of the Complaint, except admit the allegations of the first sentence of that paragraph.

85. Deny the allegations of paragraph 85 of the Complaint, except admit the allegations of the first sentence of that paragraph.

86. Deny the allegations of paragraph 86 of the Complaint, except admit the allegations of the first sentence of that paragraph.

87. Deny the allegations of paragraph 87 of the Complaint.

88. Deny the allegations of paragraph 88 of the Complaint.

89. Deny the allegations of paragraph 89 of the Complaint and respectfully refer the Court to the Freeman & Brown study for the complete contents of that study.

90. Deny the allegations of paragraph 90 of the Complaint.

91. Deny the allegations of paragraph 91 of the Complaint.

92. Deny the allegations of paragraph 92 of the Complaint.

93. Deny the allegations of paragraph 93 of the Complaint.

94. Deny the allegations of paragraph 94 of the Complaint.

95. Deny the allegations of paragraph 95 of the Complaint.

96. Deny the allegations of paragraph 96 of the Complaint.

97. Deny the allegations of paragraph 97 of the Complaint and respectfully refer the Court to the Memorandum of Paul F. Roye for the complete contents of that memorandum.

98. Deny the allegations of paragraph 98 of the Complaint.

99. Deny the allegations of paragraph 99 of the Complaint.

100. Deny the allegations of paragraph 100 of the Complaint.

101. Deny the allegations of paragraph 101 of the Complaint.

102. Deny the allegations of paragraph 102 of the Complaint.

103. Deny the allegations of paragraph 103 of the Complaint.

104. Deny the allegations of paragraph 104 of the Complaint.

105. Deny the allegations of paragraph 105 of the Complaint.

106. Deny the allegations of paragraph 106 of the Complaint.

107. Deny the allegations of paragraph 107 of the Complaint.

108. Deny the allegations of paragraph 108 of the Complaint.

109. Deny the allegations of paragraph 109 of the Complaint.

110. Deny the allegations of paragraph 110 of the Complaint, except admit that Exhibit 5 purports to show the total Portfolio Selection Fees received by Defendants from each Fund.

111. Deny the allegations of paragraph 111 of the Complaint, except admit the allegations of the seventh sentence of that paragraph.

112. Deny the allegations of paragraph 112 of the Complaint.

113. Deny the allegations of paragraph 113 of the Complaint.

114. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 114 and respectfully refer the Court to Burks v. Lasker, 441 U.S. 471 (1979) for the complete contents thereof.



115. Deny the allegations of paragraph 115 of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of that paragraph.

116. Admit the allegations of paragraph 116 of the Complaint.

117. Deny the allegations of paragraph 117 of the Complaint.

118. Deny the allegations of paragraph 118 of the Complaint, except admit the allegations of the first and second sentences of that paragraph.

119. Deny the allegations of paragraph 119 of the Complaint.

120. Deny the allegations of paragraph 120 of the Complaint.

121. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 121.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 122 of the Complaint, and respectfully refer the Court to Strougo v. BEA Assoc., 188 F. Supp. 2d 373 (S.D.N.Y. 2002) for the complete contents of that decision.

123. Deny the allegations of paragraph 123 of the Complaint.

124. In response to paragraph 124 of the Complaint, Defendants repeat and incorporate by reference their responses to paragraphs 1 through 123 above as if fully set forth herein.

125. Deny the allegations of paragraph 125 of the Complaint.

126. Deny the allegations of paragraph 126 of the Complaint.

127. Deny the allegations of paragraph 127 of the Complaint.

128. In response to paragraph 128 of the Complaint, Defendants repeat and incorporate by reference their responses to paragraphs 1 through 123 above as if fully set forth herein.

129. Deny the allegations of paragraph 129 of the Complaint.

130. Deny the allegations of paragraph 130 of the Complaint.

131. Deny the allegations of paragraph 131 of the Complaint.

132. In response to paragraph 124 of the Complaint, Defendants repeat and incorporate by reference their responses to paragraphs 1 through 123 above as if fully set forth herein.

133. Deny the allegations of paragraph 133 of the Complaint.

134. Deny the allegations of paragraph 134 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

135. This action is barred by Rule 41(a) of the Federal Rules of Civil Procedure.

SECOND AFFIRMATIVE DEFENSE

136. Plaintiffs fail to state a claim for relief.

WHEREFORE, Putnam Investment Management, LLC and Putnam Retail Management, LLP respectfully request that this Court:

(a) Grant Putnam Investment Management, LLC and Putnam Retail Management, LLP judgment on all of plaintiffs' claims and dismiss the Complaint with prejudice;

(b) Award Putnam Investment Management, LLC and Putnam Retail Management, LLP their costs and attorneys' fees for the defense of the Complaint; and

(c) Award Putnam Investment Management, LLC and Putnam Retail Management, LLP such other relief as the court deems just and proper.

Dated: April 21, 2005  
Boston, Massachusetts

Seth M. Schwartz  
Elizabeth A. Hellman  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
4 Times Square  
New York, New York 10036  
(212) 735-3000

Respectfully submitted,

/s/ James R. Carroll  
James R. Carroll (BBO #554426)  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Beacon Street  
Boston, Massachusetts 02108  
(617) 573-4800

Counsel for Defendants  
Putnam Investment Management, LLC  
Putnam Retail Management, LLP